



GENERAL STATUTES COMMISSION

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MEMORANDUM

June 5, 2012

TO: Senate Judiciary I Committee
FROM: General Statutes Commission
RE: HB 1068 (Amend UCC Article 9/Secured Transactions)

General Comments

This bill amends Article 9 of the Uniform Commercial Code, which governs secured transactions in personal property and fixtures in all 50 states. The amendments were recommended in 2010 for enactment in all states by the Uniform Law Commission (ULC) and the American Law Institute (ALI). Generally speaking, the amendments address filing issues and other matters that have arisen in practice since the Article was last revised in 1998.

To summarize, this bill:

- Provides greater guidance as to the name of an individual debtor to be provided on a financing statement (the UCC-1 and the UCC-3). If an individual debtor has a current drivers license or special identification card issued by the State, that name must be used. Otherwise, the name must be the debtor's individual name or the surname and first personal name. This is the single most important item in these amendments.
- Provides greater specificity as to the debtor's name on a financing statement when the debtor is a corporation, limited liability company, or limited partnership and when the collateral is held in a statutory or common law trust or in a decedent's estate. Essentially, the entity's name on the financing statement must be the name on its organizational documents (e.g., corporate charter).
- Provides greater protection for an existing secured party having a security interest in after-acquired property when its debtor relocates to another state or merges with another entity.
- Makes additional minor, clarifying, conforming, and technical changes to Article 9 as described more completely below.
- Includes transition provisions similar to those provided when Article 9 was last revised and includes specific authorization for the printing of official and drafters comments.
- Includes applicability provisions and an effective date of July 1, 2013. The ULC and the ALI have recommended that this date be uniformly adopted so that these amendments will be simultaneously operative in all 50 states.

According to the ULC, these amendments have already been enacted in 25 states and Puerto Rico. A draft of this bill was distributed to interested individuals and groups in this State for review, including the Department of Secretary of State, the Division of Motor Vehicles, the North Carolina Bar Association, the North Carolina Bankers Association, and various creditor and consumer groups. The General Statutes Commission is not aware of any opposition or controversy relating to the amendments.

Specific Comments

Section 1 amends G.S. 25-9-102 to add the definition of “public organic record” and to revise the definitions of “authenticate,” “certificate of title,” “jurisdiction of organization,” and “registered organization.”

The definition of “authenticate” in subdivision (a)(7) is conformed to the definition of “sign” in G.S. 25-7-102(a)(11) (dealing with documents of title such as warehouse receipts or bills of lading), which is drawn from the Uniform Electronic Transactions Act and the federal Electronic Signatures in Global and National Commerce Act (E-SIGN).

The definition of “certificate of title” in subdivision (a)(10) is expanded to include an electronic certificate of title (e.g., for an automobile). The amendment takes into account the fact that some state certificate of title systems now permit or require electronic records as an alternative to the issuance of written certificates of title, although North Carolina still issues written certificates of title only.

The definition of “jurisdiction of organization” in subdivision (a)(50) is amended to mean the jurisdiction under whose law a registered organization is either “formed” or organized.

The definition of “public organic record” in subdivision (a)(70a) is added to designate which public record is relevant to determining the name of a debtor that is a “registered organization” under G.S. 25-9-503(a)(1).

The definition of “registered organization” in subdivision (a)(73) is amended to clarify that:

- The term includes an organization that is created without the need for a public filing but that is “formed” only when a public filing has been made. For example, under Delaware law, a statutory trust is created by a governing instrument, but is formed at the time of the filing of the initial certificate of trust in the office of the Secretary of State or at any later date or time specified in the certificate of trust.
- A Massachusetts-type business trust is a “registered organization.”

Section 2 amends G.S. 25-9-105 to conform the requirements for control of electronic chattel paper with those in G.S. 25-7-106 for electronic documents of title and in G.S. 66-326 for transferrable records under the Uniform Electronic Transactions Act. New subsection (a) provides a general test for establishing control of electronic chattel paper, and subsection (b), which is based primarily on current law, provides a safe harbor test that, if satisfied, establishes control under the general test in subsection (a).

Section 3 amends G.S. 25-9-307(f)(2) to clarify that the state of location of a registered organization organized under federal law can be its main office, home office, or other comparable office if federal law allows it to so designate.

Section 4 amends G.S. 25-9-311(a) stylistically to reflect the amendment to the definition of “certificate of title” in G.S. 25-9-102(a)(10).

Section 5 amends G.S. 25-9-316 to add new subsections (h) and (i). These new subsections address the effect on a security interest in after-acquired property when a debtor moves to a different state or a new debtor in a different state becomes bound by the security agreement. Subsection (h) provides that the financing statement filed in the original jurisdiction continues to be effective against newly acquired property for up to four months after the debtor's location changes. Subsection (i) provides similar protection for a security interest in after-acquired property if a new debtor, e.g., a successor by merger, becomes bound by the original debtor's security agreement and the new debtor is located in a different jurisdiction than the jurisdiction in which the original debtor was located.

Section 6 amends G.S. 25-9-317 in subsection (d) to expand the list of intangible property that will be taken free of an unperfected security interest by a purchaser for value who had no knowledge of the unperfected security interest. Section 6 also updates "security certificate" to "certificated security."

Section 7 amends G.S. 25-9-326 to make conforming amendments necessitated by new subsections (h) and (i) of G.S. 25-9-316.

Section 8 amends G.S. 25-9-406(e) and (i) and adds a missing comma in subsection (d).

Section 8 amends G.S. 25-9-406(e) to make subsection (d) apply to a sale, after default, of a payment intangible or promissory note held as collateral and to an acceptance of collateral in full or partial satisfaction of the obligation it secures (subsection (d) makes contractual restrictions on the assignment of accounts, chattel paper, payment intangibles and promissory notes ineffective).

Section 8 also amends G.S. 25-9-406(i), which contains a list of statutory provisions to which subsection (f) does not apply (subsection (f) makes legal restrictions on assignments ineffective). The amendments to subsection (i) reformat the subsection and make a conforming amendment adding the "North Carolina State Lottery Act (Chapter 18C of the General Statutes)" to the list of exceptions to subsection (f). That Act was enacted after the enactment of subsection (f); it provides in G.S. 18C-132(h) that "The right of any person to a prize shall not be assignable."

Section 9 makes amendments to G.S. 25-9-408 that are similar to those in Section 8.

Section 10 amends G.S. 25-9-502(c)(3) to provide an exception to the requirements for the name of an individual debtor in a mortgage filed as a financing statement for a fixture filing or to cover as-extracted collateral or timber to be cut. In this case, the individual's name is sufficient if the mortgage provides the debtor's individual name or surname and first personal name.

Section 11 amends G.S. 25-9-503 to provide more guidance on the sufficiency of a debtor's name to be provided on a financing statement. Because financing statements are indexed under the debtor's name, those who wish to find financing statements must know the correct name to search effectively.

Subsection (a) explains what the debtor's name is for purposes of a financing statement if the debtor is an individual, a registered organization (e.g., a corporation, limited partnership, or limited liability company), a decedent's estate, or a trust or trustee acting with respect to property held in a trust. The amendments to this subsection provide as follows:

- Under subdivision (a)(1), if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, the name must be the registered organization's name on the "public organic record" most recently filed with or issued or enacted by the registered organization's jurisdiction of organization which purports to state, amend, or restate the registered organization's name (e.g., a corporation's charter, an amendment to the charter, or a restated charter).
- Under subdivision (a)(2), if the collateral is being administered by the personal representative of a decedent, the name provided must be the name of the decedent and a separate part of the financing statement must indicate that the collateral is being administrated by a personal representative. New subsection (f) provides a safe harbor for the name of the decedent (name of decedent is sufficient if it is the name indicated on the order appointing the personal representative).
- Under subdivision (a)(3), if the collateral is held in a trust that is not a registered organization, the name must be the name of the trust if a name is stated in the trust's organic record; otherwise the name must be that of the settlor or testator. The financing statement must also indicate, in a separate part, that the collateral is held in trust and, if the name of the settlor or testator is provided as the name of the debtor, must provide sufficient additional information to distinguish the trust from other trusts having one or more of the same settlors or the same testator. New subsection (h) defines the term "name of the settlor or testator" for purposes of subdivision (a)(3).
- Under subdivision (a)(4), if the debtor is an individual who has an unexpired North Carolina drivers license or a special identification card issued under Article 2B (Special Identification Cards for Nonoperators) of Chapter 20 of the General Statutes, the name must be the name on the drivers license or card. If an individual has been issued more than one drivers license or special identification card, new subsection (g) provides that the one that was issued most recently is the one to which subdivision (a)(4) refers.
- Under subdivision (a)(5), if the debtor does not have an unexpired drivers license or special identification card, the name must be either (i) the individual name of the debtor (as required by current Article 9) or (ii) the surname and first personal name of the debtor.
- Under subdivision (a)(6), the debtor's name in other cases must be the organization's name or, if there is none, the names of the partners, members, associates, or other constituents.

Section 12 amends G.S. 25-9-507(c) to make conforming amendments. The amendments replace a reference to a change of the debtor's name provided on a filed financing statement making the financing statement seriously misleading with a reference to the debtor's name becoming insufficient as the name of the debtor under G.S. 25-9-503(a) so that the financing statement becomes seriously misleading.

Section 13 amends G.S. 25-9-515(f) to provide that a debtor may be designated as a transmitting utility only in an initial financing statement; the designation cannot be made by an amendment to a financing statement. Section 13 makes the transmitting utility provision consistent with the filing provisions for public-finance and manufactured-home transactions under G.S. 25-9-515(b).

Section 14 amends G.S. 25-9-516(b) to make conforming amendments by changing “correction statement” to “information statement” and “last name” to “surname” and to delete as a ground for a filing office to reject a financing statement the failure of the financing statement to provide the debtor’s type of organization (e.g., a partnership or corporation), jurisdiction of organization, or organizational identification number or indication that the debtor has none. This ground is deleted because the information is not considered to be sufficiently useful in practice and often adds cost and delay to the filing process.

Section 15 amends G.S. 25-9-518, which permits a debtor to file a “correction statement” to indicate that a financing statement or other filed record is inaccurate or wrongfully filed. The amendments give the filing a new name (an “information statement”) and also permit a secured party of record to file an “information statement” (e.g., if someone incorrectly filed a termination statement).

Section 16 amends G.S. 25-9-521 to replace the existing “safe harbor” national financing statement forms with the new forms that were approved, effective April 20, 2011, by the International Association of Commercial Administrators, the organization that prepares financing statement forms for adoption by the states. The forms have been updated to reflect the 2010 amendments to Article 9.

Section 17 amends G.S. 25-9-607(b)(2)a. to clarify that the phrase “a default has occurred” refers to a default with respect to the obligation secured by the mortgage in question.

Section 18 amends G.S. 25-9-625(c) to conform the heading of the subsection to the text of the subsection.

Sections 19 through 25 provide transition provisions that apply only to the amendments and that are modeled upon the transition provisions used in connection with the 1998 revision of Article 9.

Section 26 provides applicability provisions.

Section 27 authorizes the printing of official comments and drafters comments.

Section 28 provides that the amendments become effective July 1, 2013, the uniform effective date adopted by the ULC and the ALI.